

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

December 17, 2009

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, December 17, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; David Dennis; Darrell Downing; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson; Joe Johnson; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell and Don Sherman (In @1:31 P.M.). Staff members present were: Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

-
1. Approval of the November 19, 2009 and December 3, 2009 MAPC meeting minutes:

Approval of the November 19, 2009 MAPC meeting minutes.

MOTION: To approve the November 19, 2009 minutes as amended.

J. JOHNSON moved, **MITCHELL** seconded the motion, and it carried (12-0-1).

HENTZEN – Abstained.

Approval of the December 3, 2009 MAPC meeting minutes.

MOTION: To approve the December 3, 2009 minutes as amended.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (13-0).

SHERMAN (In @1:31 P.M.)

-
1. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**
Items may be taken in one motion unless there are questions or comments.

- 2-1. **SUB 2009-76: One-Step Final Plat -- RIDGE PORT NORTH 6TH ADDITION**, located on the east side of Ridge Road and the south side of 37th Street North.

NOTE: This is a replat of a portion of the Ridge Port North 2nd Addition. This site is also contained within a portion of the Ridge Port North CUP (DP-237).

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department advises that Lot 4 has access to Water. The applicant needs to extend sewer (lateral) main to serve this lot. Water and sewer is available to serve all other lots.

- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. In accordance with the CUP, the plat proposes one opening along Ridge Road and two openings along 37th St. North.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. This covenant shall also provide for the Homeowners' Association to maintain the "parking strip" located between this site's north and west property line and driving surface for adjoining streets.
- F. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The Applicant needs to request a CUP adjustment as the CUP parcel boundaries do not correspond with the lots being platted.
- H. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Ridge Port North Community Unit Plan (DP-237).
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- K. The year "2010" needs to replace "2009" within the signature blocks.
- L. The plat's text shall replace "private street" with "private drive."
- M. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.

- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Westar Energy requests additional utility easements.
- V. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

HILLMAN asked about fencing and lighting requirements because the site backs up to residential zoning.

STRAHL said those items will be addressed with the Community Unit Plan (CUP). He said CUP requirements are not reviewed with the plat.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

HILLMAN moved, **J. JOHNSON** seconded the motion, and it carried (14-0).

2. **PUBLIC HEARING – VACATION ITEMS**

3-1. **VAC2009-42: Request to vacate a portion of a platted setback.**

OWNER/APPLICANT: Caro Properties, Inc. (owner/applicant)/ KE Miller, c/o Kirk Miller (agent)

LEGAL DESCRIPTION: The north 60 feet of the platted 70-foot interior side yard setback that runs parallel to the south lot line of Lot 5, Block 1, Broadmoor at 21st Street Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located west of Rock Road, south of 21st Street North, on the west side of Broadmoor Street (WCC #II)

REASON FOR REQUEST: Additional room to develop multi-family

CURRENT ZONING: Subject property and abutting northern and western properties are zoned GO General Office (“GO”). Abutting and adjacent southern and eastern properties are zoned MF-18 Multi-family Residential (“MF-18”).

The applicant proposes to vacate the north 60 feet of the platted 70-foot interior side yard setback, which runs parallel to the south lot line of Lot 5, Block 1, Broadmoor at 21st Street Addition. The GO zoned site is part of CUP DP-62; the CUP’s setback reflects the platted setback. The Unified Zoning Code’s (UZC’s) minimum interior side yard setback for the GO zoning district is zero feet, but if a setback is provided it shall be a minimum of 5 feet. The UZC’s minimum interior side setback for a CUP is 35 feet, when it abuts a residential zoning district (Art III, Sec III-2, 2-a (2)); the abutting southern property is zoned MF-18 and is part of CUP DP-62. Per the UZC, the MAPC or the Governing Body may modify or waive the setback and lot coverage requirements (a consideration if the proposed reduction of the setback leads to an increase in the lot coverage) as part of an amendment to the CUP, as directed in Art.III, Sec.III-2(d) of the UZC. There is a platted 10-foot utility easement, which appears to cover manholes and sewer line, located in the south 10 feet of the platted setback; the abutting southern property has a 20-foot (east portion) and a 40-foot (west portion) utility easement running parallel to the subject site’s platted 10-foot utility easement. The platted 10-foot utility easement on the subject site cannot be encroached into by a setback established by the vacation request; see UZC’s GO zoning district’s interior side yard setback standards. There are no other utilities located in the platted setback or the platted 10-foot utility easement. The Broadmoor at 21st Street Addition was recorded with the Register of Deeds June 12, 1987.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time November 26, 2009, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described portion of the platted setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacating the north 60 feet of the platted 70-foot setback is contingent on approval of an amendment to CUP DP-62, to reduce the described setback. A consideration of that amendment may also include a reduction of DP-62’s lot coverage requirement for the subject site, if the proposed reduction of the setback leads to an increase in the lot coverage.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant’s expense.

- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacating the north 60 feet of the platted 70-foot setback is contingent on approval of an amendment to CUP DP-62, to reduce the described setback. A consideration of that amendment may also include a reduction of DP-62's lot coverage requirement for the subject site, if the proposed reduction of the setback leads to an increase in the lot coverage.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (14-0).

PUBLIC HEARINGS

3. **Case No.: PUD2009-06** (deferred from 11-19-2009) - Prairie Polo, Inc., c/o Jack L. Shelton (owner), Great Plains Equestrian Training (applicant), Mike Dirck (agent) Request to Create a County Planned Unit Development (PUD #33) to allow outdoor recreation, associated retail, an arena, stables, camping, banquet halls, classrooms, offices, signs and a billboard on property described as;

The West half of the Northeast Quarter of the Southwest Quarter of Section 16, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT the North 330 feet thereof

AND

The East half of the Northeast Quarter of the Southwest Quarter of Section 16, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT the North 330 feet thereof

AND

The South half of the Southwest Quarter of Section 16, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; EXCEPT that portion taken for Protection Drainage District of Sedgwick County, Kansas, in District Court Case No. 73915; and except that portion taken by

the Kansas Turnpike Authority, in District Court Case NO. A-54472 and except that tract beginning 20 feet North and 30 feet East of the Southwest corner of the Southwest Quarter of Section 16, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence East parallel with the Section line, 420 feet; thence North 50 feet; thence in a Northwesterly direction to a point 290 feet due North of a point of beginning; thence South 290 feet to the place of beginning

AND

The Northwest Quarter of the Southwest Quarter of Section 16, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT the North 330 feet thereof, generally located on the northeast corner of 95th Street South and Broadway Avenue/US 81.

BACKGROUND: The applicants are proposing the creation of Planned Unit Development #33 (PUD). The PUD will replace the RR Rural Residential (“RR”) zoning on the 124.80-acre tract and CON2008-31. The proposed PUD will allow additional agricultural buildings, buildings for classrooms, offices, and a banquet hall with a kitchen for fund raisers and group events associated with the polo complex. Alcohol sales are proposed with conditions. The PUD will also allow additional signage for advertising sponsors of the complex, additional directional signage, and liability signs. The applicants also propose to approach K-DOT to place an off-site billboard(s) located on its east side, which abuts the Kansas Turnpike/I-35. Retail associated with the polo complex would also be permitted, including tack and equipment for the horses. The area is located within the City of Haysville’s zoning influence and as such will be considered by their Planning Commission prior to the MAPC’s public hearing meeting. The site is also located within the City of Haysville’s Subdivision Jurisdiction, thus application, review and approval of its platting will be by Haysville.

The area around the site is developed with large tract and single-family residential subdivisions, zoned RR and SF-20 Single-family Residential (“SF-20”). There are some LC Limited Commercial (“LC”) zoned residential properties and small, older retail around the 95th Street South and Broadway Avenue /US-81 intersection. There are agricultural fields surrounding the area’s residences and part of the site. The Kansas Turnpike/I-35 abuts the east side of the site and 95th and Broadway/US-81 abut its south and east sides. These three roads separate the site from residential development located west, east and south of the site. There are two large tract single-family residences/farmsteads abutting the north side of the site, with the Polo residential subdivision (4-13-1995) located north of them. There is no exit off of the Turnpike onto 95th. The nearest exits to the site off of the Turnpike are the Mulvane exit, located approximately 3 miles south of the site at 119th Street South, and the Derby and Haysville exit, located approximately 3 miles north of the site, at the 71st Street South. The Mulvane exit would be the exit used for land currently under consideration for the location of the Sumner County casino and resort.

CASE HISTORY: The property is unplatted. CU-486 was approved by the Haysville Planning Commission, with conditions, July 9, 1998. CU-486 was approved by the MAPC, with conditions, July 16, 1998. CU-486 allowed “Outdoor Recreation and Entertainment,” for polo fields, with conditions for an approximately 23-acre RR zoned site, located northeast of the Broadway Avenue/US 81 – 95th Street South intersection. CON2008-31 amended CU-486 by increasing the size of the site to approximately 124.80-acres and by revising numerous conditions attached to CU-486. Those amended conditions include: allowing additional storage and, maintenance buildings, barns/stables, paddocks, an additional polo field, 100-foot setbacks, one full time drive/access onto Broadway, 35-foot (including the base) pole lights for matches that may extend into the evening, for packing up and cleaning up after matches, to be on no later than 10:00 P.M., allow portable concessions for nonprofit groups or special events, allow portable bleachers, signs along Broadway and 95th Street South, outdoor speakers with conditions, teaching of polo, boarding of polo ponies, and limited overnight camping for stockmen; see attached CON2008-31 Resolution. CON2008-31 was approved by the Haysville Planning Commission and the MAPC.

ADJACENT ZONING AND LAND USE:

NORTH: RR, SF-20 large tract & platted single-family residences
SOUTH: RR, LC, SF-20 large tract & platted single-family residences, old smaller retail
EAST: RR Kansas Turnpike/I-35, single-family residences, manufactured homes
WEST: LC, SF-20, RR large tract & platted single-family residences, construction services, agricultural fields

PUBLIC SERVICES: There is no public water or sewer available and the site is outside of all Rural Water Districts. Additional access onto Broadway/US 81 must be approved by K-DOT and the County Engineer. A portion of the site is located in an area that is in the FEMA flood zone, which means development within it must be addressed with an approved drainage plan and must meet all standards for construction of buildings/structures on the site, per the County Engineer and Code Enforcement.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive Plan* identifies this area as “rural.” The rural classification is outside of any city’s growth area and is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately large lot residential development. The applicant’s previous Conditional Use applications (CU-486 & CON2008-31) established “Outdoor Recreation and Entertainment,” and a “Riding Academy” for polo fields, with conditions, including the RR zoned site growing from a 23-acres to 124.80-acres. Stabling and riding horses is a common rural activity and permitted by right. Expanding stabling and riding into outdoor recreation, playing and teaching polo fields, can be (and have been) considered by a Conditional Use in the RR zoning district. The proposed PUD expands signage, including a proposed offsite billboard(s) (contingent on review and permitting by K-Dot and Sedgwick County Sign Code), approves the sale of alcohol with conditions, allows retail associated with the polo activities, and allows additional agricultural and accessory buildings. Rather than spot zone LC within the Conditional Use, for the retail and off site billboard and propose another amendment to the Conditional Use to address other changes, including permanent seating around the arena, another polo field, wind generators, additional concession areas, more buildings and different use in those buildings and signage, the PUD was applied for. A PUD is intended to:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots. The proposed PUD allows one zoning for the entire property, whose main uses are still an “Outdoor Recreation and Entertainment” and a “Riding Academy.” As written in the provisions of the PUD, the proposed additional uses would be in support and accessory to these two main uses.
- (2) Allowing greater freedom in selecting the means to provide access, light, open space and design amenities. Locations of facilities on the site are fluid within the provisions of the PUD, and include 100-foot setbacks, landscape buffers, and what will be determined by the required platting.
- (3) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses. The main uses of the site “Outdoor Recreation and Entertainment” and a “Riding Academy” and their supporting uses require both a large rural site, with the ability to generate money for maintenance, improvements and continuation of the polo complex, the proposed PUD does this.
- (4) Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code. The PUD allows mixed uses without inappropriate LC spot zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the proposed PUD be APPROVED, subject to platting within a year and the attached General Provisions and the provisions for the specific parcels (see attached):

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: The area around the site is developed with large tract and single-family residential zoned RR and SF-20 Single-family Residential ("SF-20"). There are some LC Limited Commercial ("LC") zoned residential properties and small, older retail around the 95th Street South and Broadway Avenue /US-81 abut intersection. There are agricultural fields surrounding the area's residences and part of the site. The Kansas Turnpike/I-35 abuts the east side of the site and 95th and Broadway/US-81 abut its south and east sides. These three roads separate the site from residential development located west, east and south of the site. There are two large tract single-family residences/farmsteads abutting the north side of the site, with the Polo residential subdivision (4-13-1995) located north of them. There is no exit off of the Turnpike onto 95th. The nearest exits to the site off of the Turnpike are the Mulvane exit, located approximately 3 miles south of the site at 119th Street South, and the Derby and Haysville exit, located approximately 3 miles north of the site, at the 71st Street South. The Mulvane exit would be the exit used for land currently under consideration for the location of the Sumner County casino and resort.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which primarily permits agriculture uses and large lot residential uses. The site could be used for a single-family residence or agriculture. The site's previous Conditional Uses, CU-486 & CON2008-31, allows the polo complex with conditions; see attached CON2008-31 Resolution. The site could continue to be used as zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed PUD will allow three (3) additional buildings for classrooms, offices, and a banquet hall with a kitchen for fund raisers and group events associated with the polo complex. Alcohol sales are proposed with conditions. The PUD will also allow additional signage for advertising sponsors of the complex, additional directional signage, and liability signs. The applicants also propose to approach K-DOT to place an off-site billboard located on its east side, which abuts the Kansas Turnpike/I-35. Retail would also be permitted including tack and equipment for the horses and retail sales associated with the polo complex. Signage, retail sales and alcohol sales will increase revenue for the site, which in turn will generate money for maintenance, improvements and continuation of the polo complex. Traffic could increase off of the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposed PUD expands signage, including proposed off site billboards, contingent on review and permitting by K-Dot and Sedgwick County Sign Code, approves the sale of alcohol with conditions, and limited retail. Rather than spot zone LC within the Conditional Use, for the retail and off site billboard and propose another amendment to the Conditional Use to address other changes, including permanent seating around the arena, another polo field, wind generators, additional concession areas, more buildings and different use in those buildings and signage, application for the PUD zoning was made. The main uses of the site "Outdoor Recreation and Entertainment" and a "Riding Academy" and their supporting uses require both a large rural site, with the ability to generate money for maintenance, improvements and continuation of the polo complex; the proposed PUD does this.
5. Impact of the proposed development on community facilities: Impact should be minimal with the provisions of the PUD and possibly improved with the required platting, which will more comprehensively address drainage. Traffic will have surges according to the number of people using the site as participants in the sport or by people coming to watch the games.

BILL LONGNECKER, Planning Staff presented the Staff Report. He noted the following revisions to the Staff Report requested by the Hayesville Planning Commission which were to remove the wording

“45-foot maximum” from Item B on Parcel 1 and Item C on Parcel 2. He commented that the Hayesville Planning Commission unanimously approved the request.

HILLMAN asked if the Kansas Department of Transportation (KDOT) and Sedgwick County had approved access to Highway 81.

LONGNECKER commented that any additional drives beyond what the site currently has would be dealt with during review and approval of the plat.

MOTION: To approve subject to staff recommendation.

J. JOHNSON moved, **B. JOHNSON** seconded the motion, and it carried (14-0).

-
4. **Case No.: ZON2009-36 and CON2009-40** - Mark Ysidro (owner/applicant) Ferris Consulting, c/o Greg Ferris (agent) Request zone change from SF-5 Single-Family Residential to LI Limited Industrial and GC General Commercial and a City Conditional Use for Wrecking/Salvage on LI Limited Industrial zoned property described as;

The North 6 acres of the North 10 acres of the South 30 acres of Government Lot 4, in Section 9, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas.

AND

The South 4 acres of the North 10 acres of the South 30 acres of Government Lot 4, in Section 9, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, generally located east of Broadway and 600' north of MacArthur Road.

BACKGROUND: The applicant is requesting a zone change from SF-5 Single-family Residential (“SF-5”) to GC General Commercial (“GC”) and LI Limited Industrial (“LI”) and a Conditional Use to permit a wrecking/salvage yard on the rezoned LI portion of the 9.66-acre unplatted tract. The subject property was a nursery, which still has many of the nursery’s structures on it. The Unified Zoning Code (UZC) definition of a “wrecking and salvage yard” includes the proposed use: “...a lot, land, or structure used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage materials, junk, or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards.” The UZC, Art III, Sec III-D.6.e, requires a Conditional Use for a wrecking/salvage yard in the LI zoning district.

Per the UZC, Art II, Sec II-B.14.q, the conditions for Conditional Use for a wrecking/salvage yard in the LI zoning district are:

- (1) Is not abutting an arterial street, expressway, or freeway;
- (2) In the opinion of the Planning Director, will not adversely affect the character of the neighborhood; and
- (3) Is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

The surrounding area is developed with tire sales and outdoor tire storage, car sales, vehicle repair, vehicle body repair shops, vehicle towing and storage, vehicle wrecking and salvage yards, junk yards, a sexual oriented business, motels and retail. Many of the existing commercial/industrial uses located on the east side of Broadway do not conform to the UZC’s regulations, as only their Broadway frontage is zoned GC, but their commercial/industrial uses extend to the back of their deep lots, which are zoned SF-5. There are a few single-family residences scattered on these SF-5 zoned portions of properties. An exception to this zoning pattern is a property owned by the applicant (Ysidro Addition, recorded May 24, 2004), located approximately 400 feet north of the subject site. This site is zoned LI with a Conditional Use for a vehicle wrecking and salvage yard; ZON2003-70 and CON2003-53. The subject site backs up

to the Arkansas River and a portion of I-135 right-of-way (ROW) on its east side. All of the properties in this area, located on the east side of Broadway, end at the river or the river and the interstate ROW. Properties located on the west side of Broadway are zoned GC, are not deep and are much smaller than the properties located on the east side of Broadway. These west properties' back yards end at northeast to southwest running railroad tracks, which separates them from an LI zoned cement plant.

The site plan shows an existing 15-foot wide landscape buffer along the site's north, east and south sides. Compatibility setbacks would extend beyond this 15-foot landscape buffer, up to 25 feet on the north and south sides of the site, if the LI zoning is approved. A proposed 8-foot solid, corrugated metal fence is shown around all four sides of the of the proposed LI zoned portion of the site, where the vehicle wrecking and salvage yard is to be located. The proposed GC zoning will run from Broadway, 475 feet deep into the subject site, as shown on the site plan. The site plan also shows some of the existing structures to stay up, including a stone/brick house located in the proposed GC portion of the site.

CASE HISTORY: The site is not platted. The site was a nursery, which still has many of the nursery's structures on it. This request was approved (unanimously) by DAB III at their December 2, 2009 meeting. There were members of the public that were against the request.

ADJACENT ZONING AND LAND USE:

NORTH: GC, SF-5, LI	Vehicle storage and sales, vehicle auction, vehicle wrecking and salvage yards, motel
SOUTH: GC, SF-5	Vacant land, tire sales & outdoor storage of tires
EAST: SF-5	Arkansas River, I-135 ROW, single-family residential (across the river)
WEST: GC, LI	Car sales, motels, vehicle repair shops, RR tracks, cement plant

PUBLIC SERVICES: The subject property has direct access to Broadway Avenue, a 4-lane arterial. The 2030 Transportation Plan shows no changes to this street. There are no CIP projects for this street. All utilities are available to the subject site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the general location as appropriate for "Regional Commercial" development. The Land Use Guide identifies vehicle wrecking and salvage yards as appropriate for land identified for "Processing Industry" uses, which promotes more intensive land uses than the "Regional Commercial" classification. There are numerous auto storage yards and auto salvage yards in this area that are not in compliance with the current UZC, with some being in the area since at least 1997, as shown on aerials. Although the applicant's Conditional Use application is not in conformance with the Land Use Guide, it would not introduce a new use to the area, change the character of the area, and would be similar to the applicant's first site, which was approved for LI zoning and a Conditional Use for wrecking and salvage; the adjacent ZON2003-70 and CON2003-53. It appears that the area does not have the access, visibility and the amount of land needed for regional commercial development, as it is narrowly defined by the Arkansas River, railroad tracks and the interstate. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development, with the Arkansas River preventing expansion.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the requested LI zoning be approved, beginning approximately 475 feet east of the Broadway Avenue ROW, the requested GC zoning shall end approximately 475 feet east of the Broadway Avenue ROW and a Conditional Use for a wrecking and salvage yard on the LI portion of the site be

APPROVED, subject to platting within a year of approval by the governing body and the following conditions:

1. The Conditional Use shall authorize the operation of a vehicle wrecking and salvage yard. In no event shall the storage or bailing of waste, scrap paper, rags or junk (excluding metal) be permitted in conjunction with this use.
2. The site shall be developed in accordance to an approved site plan.
3. The subject property shall be entirely enclosed by a metal panel fence that is not less than 8 feet in height and having cracks and openings not in excess of five percent of the area of such fence. The metal panel fence shall be a single color and shall be white, gray, tan or similar non-bright color. Access gates are permitted in the screening fence, but all gates shall be constructed of solid metal panels matching the fence and shall remain closed unless in use. No wrecked vehicles or salvage, including vehicle parts or accessories, shall be permitted for screening purposes or located on or attached to the screening fence. The site shall be developed and operated in compliance with all the other conditions of UZC, Art II, Sec. II-B.14.q.
4. The height of wrecked vehicles or salvage, including vehicle parts or accessories, shall not exceed the height of the screening fence and shall not be visible from ground-level view from any public right-of-way or adjoining properties.
5. Salvaged materials are to be piled and stored in an orderly manner such as would be provided by racks or bins. In order to reduce rodent potential, racks and bins shall be elevated so there is at least 18 inches between the bottom of the rack or bin and the ground. Racks or bins shall be a minimum of 48 inches away from any wall, fence, or other rack or bin. Non-rackable material shall be stored with an exposed perimeter or in a manner specified by Environmental Services to prevent rodent harborage and breeding. All stored, wrecked and salvaged vehicles and materials shall be on a surface approved by the Office of Central Inspection.
6. The applicant shall maintain at all times an active program for the eradication and control of rodents.
7. Weeds shall be controlled within the salvage area and adjacent to and along the outside perimeter of the screening fence.
8. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the wrecking/salvage yard shall be provided by fire lanes per the direction and approval of the Fire Department.
9. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
10. Access to the subject property shall be provided for on-going inspections of the site for soil and groundwater contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells on the property to monitor the quality of groundwater and shall pay the cost of an annual groundwater test for contaminants as designated by Environmental Services.
11. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be place on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

12. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
13. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
14. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is developed with tire sales, car sales, vehicle repair, including body shops, vehicle towing and storage, vehicle wrecking and salvage yards, junk yards, a sexual oriented business, motels and some small retail. Many of the existing commercial uses located on the east side of Broadway do not conform to the UZC's regulations, as only their Broadway frontage is zoned GC, but their commercial uses extend to the back of their deep lots, which are zoned SF-5. There are a few single-family residences scattered on these SF-5 zoned portions of properties. An exception to this zoning pattern is a property owned by the applicant (Ysidro Addition, recorded May 24, 2004), located approximately 400 feet north of the subject site. This site is zoned LI with a Conditional Use for a vehicle wrecking and salvage yard; ZON2003-70 and CON2003-53. The subject site backs up to the Arkansas River and a portion of I-135 right-of-way (ROW) on its east side. All of the properties in this area, located on the east side of Broadway, end at the river or the river and the interstate ROW. Properties located on the west side of Broadway are zoned GC, are not deep and are much smaller than the properties located on the east side of Broadway. These west properties' back yards end at northeast to southwest running railroad tracks, which separates them from an LI zoned cement plant.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GC along its Broadway frontage, with the remaining approximately 80% of the site is zoned SF-5. The site used to be a nursery, a use not in compliance with the zoning. The GC zoning would allow commercial uses that allowed outside display, such as a car sales lot, or all types of vehicle repair, motels or many other retail uses. The chance of single-family residences being built on the SF-5 zoned portion of the site is unlikely, given the almost industrial character of the area. A wrecking and salvage yard may be permitted with a Conditional Use in the LI zoning district. The site not abutting an arterial street, expressway, or freeway, and is not out of character with the area's existing, non compliant auto salvage yards and junk yard.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property should be minimized by the recommended conditions of approval, which include screening. Approval of the Conditional Use and its conditions will be the second for the area's existing, non compliant auto wrecking and salvage yards and junk yards
4. Conformance of the requested change to adopted or recognized Plans/Policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the general location as appropriate for "Regional Commercial" development. The Land Use Guide identifies vehicle wrecking and salvage yards as appropriate for land identified for "Processing Industry" uses, which promotes more intensive land uses than the "Regional Commercial" classification. There are numerous auto storage yards and auto salvage yards in this area that are not in compliance with the current UZC, with some being in the area since at least 1997. Although the applicant's Conditional Use application is not in conformance with the Land Use Guide, it would not

introduce a new use to the area, change the character of the area, and would be similar to the applicant's first site, which was approved for LI zoning and a Conditional Use for wrecking and salvage; the adjacent ZON2003-70 and CON2003-53. It appears that the area does not have the access, visibility and the amount of land needed for regional commercial development, as it is narrowly defined by the Arkansas River, railroad tracks and the interstate. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development, with the Arkansas River preventing expansion.

5. Impact of the proposed development on community facilities: All utilities are available to the site. The use of this property should have limited impact on community facilities, with the possible exception of soil and groundwater contaminants.

BILL LONGNECKER, Planning Staff presented the Staff Report. He commented that DAB III unanimously approved the request at their December meeting.

FOSTER asked about the reference on condition number 3.

LONGNECKER said that this was from the Supplemental Use Regulations for wrecking and salvage yards, but that he would check on the reference number.

FOSTER asked about buffering requirements.

LONGNECKER said landscaping will be required where the area abuts single-family residential zoning on its north and south sides, while referring to the zoning map of the area.

HILLMAN mentioned the lakes and the river in the immediate area and the sandy soil. He said since vehicle salvage yards are not required to provide a hard surface at this time, he sees this as an opportunity to add to the polluted water in the river in the area because the water table is about 10 foot down in this sandy soil.

LONGNECKER noted that the referenced approved surface for a wrecking and salvage yard was from the zoning code and that the required platting of the site would address drainage. He suggested that the agent for the applicant could shed some light on what has happened in the area.

GREG FERRIS, AGENT FOR THE APPLICANT MARK YSIDRO said the property was formerly a nursery. He said the applicant owns the property 3 lots to the north of the site. He said the City condemned the east portion of the applicant's lot to the north for expansion of Arkansas River drainage in this area. He said the application was for contract sale of vehicles after they have been towed. He said they need the wrecking/salvage yard designation in order to sell vehicles that have been towed that are inoperable. He said a Conditional Use in Limited Industrial (LI) allows for wrecking and salvage operations. He said they fully agree with all of conditions listed in the Staff Report and the DAB recommendations. He mentioned several requirements such as a State License, not being allowed to stack vehicles over the fence; and, specifically, condition number 12 which was the requirement of a drainage plan approved by the City Engineer. He said they believe drainage is a non-point since contamination of surface or ground water will be addressed during the platting process and these issues were not unusual in these types of situations. He said this use was not out of character with the area. He said they will provide fencing and landscaping and that since this was previously a nursery, there are already mature shade and ornamental trees around the site.

HILLMAN noted that the vehicles will be taken apart and that there was no requirement for any hard surfacing in this area. He said it was difficult to understand how they were going to contain any materials from going into the river immediately east of the site.

FERRIS said the current requirements are the same as they are on the lot to the north. He said they do not intend to pave nor do they believe it is necessary. He said the provisions of conditions number 11 and 12 will provide monitoring and protection for the area by the City's Environmental Services.

VICKI CHURCHMAN, 1357 S. BROADWAY, SECRETARY FOR THE IMPLEMENTATION COMMITTEE FOR THE SOUTH CENTRAL IMPROVEMENT ALLIANCE admitted the need for this kind of operation and said that this location on many levels was a very good one. She said she agreed with Mr. Hillman's comments about location of this kind of activity so very near the river in an area where the City is already trying to clean up groundwater pollution. She said she was not up there saying don't put in another salvage yard. She referenced condition number 5 which indicated "on a surface approved by OCI." She said that combined with condition number 12 which was the approved drainage plan and that one other special activity of making sure that oil and other pollutants don't seep through the sandy soil into the river and nearby lakes could make this a good location.

DALE CHURCHMAN, 1357 S. BROADWAY said he agreed with most of the things said by the previous speaker with a few exceptions. He said they have worked very hard in south central Wichita to try to change the image of south Broadway. He said it seems like the idea is, if there is already salvage yards and junk yards present in an area, then just add some more. He said they have been trying to clean up some of those yards, not add to them. He said they are trading a nursery, which is pretty attractive with all its trees for a junk yard which doesn't seem like a fair exchange. He said they are working very hard on the river because they know this is the biggest asset they have in south central Wichita. He said they have been cleaning it up, trying to do something about the banks, obtaining plantings to plant along it and make it the attractive river it should be. He said this planned salvage yard is almost on the banks of that river. He said lets back up and keep industrial things away from the river and use the river for its beauty and environment. He said there is already too much of this type of activity along the river. He said they feel fortunate that B&G has seen the light and are moving to El Dorado instead of expanding. He said B&G listened to the neighborhood and community. He mentioned contamination and water pollution in south Wichita and that the City's Water Center was built to try to help relieve that situation. He asked if it made sense to spend all that money to clean up the water and then put something just south of the Center that will cause more pollution. He said this is very much against the neighborhood plan, although he admitted the plan does not extend quite that far to the south. He concluded by stating that the John Mack Bridge was the entrance to the neighborhood and that if you entered Wichita from either north or south Broadway the impression was not good. He suggested instead of adding to the depressing atmosphere, why not do something to clean the area up and make it look better.

MITCHELL asked where the pollution was coming from that was being treated at the WATER Center.

CHURCHMAN said he believed mainly the Gilbert/Mosley area.

MITCHELL clarified the pollution was not coming from commercial or auto wrecking salvage yards adjacent to the river.

CHURCHMAN said he could not answer that question, he did not know.

LONGNECKER said he would like to make a change on the reference to the Unified Zoning Code (UZO) on page 2 of the Staff Report, and page 4 on condition number 3. He said the reference should be Article 3, Section 3D and 6E. He said he had sent the Staff Report to Environmental Services, but had not heard back from them. He specifically pointed out conditions 10, 11, 12 in reference to monitoring the site in regards to the environmental impact of chemicals and fuels as a result of this activity. He

briefly explained the definition of an all weather surface which included gravel up to a certain dimension, asphalt and concrete.

FERRIS commented that this site was quite a ways from any residential areas, but added that the first 475 feet of the site is going to remain as is and that there will be no wrecking and salvage operations anywhere near Broadway. He added that the front section of the property is already zoned General Commercial (GC). He said they will have a gravel surface which is pretty much standard for these types of facilities. He added that he did not think that anyone would want a hard surface, particularly if they are concerned about run off. He concluded by saying that they have a drainage plan that will address issues and that they will follow the conditions recommended in the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **DOWNING** seconded the motion, and it carried (13-1).

HILLMAN – No.

5. **Case No.: CON2009-37** - Edward and Pamela Crawford; (Applicant(s)/Owner) Request County Conditional Use request for an accessory apartment on property described as;

Lot 3, Block F, Redmond Estates Addition to Wichita, Sedgwick County, Kansas, generally located midway between MacArthur Road and 31st Street South, west of 119th Street West, on the south side of 34th Street South.

BACKGROUND: The applicant is requesting a Conditional Use to allow an accessory apartment on a SF-20 Single-family Residential (“SF-20”) zoned 1-acre lot, located at 12111 W. 34th Street S.; Lot 3, Block F, Redmond Estates Addition. The site has a two story single-family residence (built 2007) and a large accessory structure (Pool House). The applicant has converted the existing pool house into an accessory apartment. The Unified Zoning Code (UZC) requires “Conditional Use” approval for an accessory apartment.

The site is part of the Redmond Estates single-family residential subdivision. This subdivision consists of 52 lots approximately 1 (most) to 2 acres in size. The subdivision is a little less than a quarter of the way developed, with houses appearing to have been built between 2004 and 2007, with one house along 119th St. having been built in 1900. The subdivision is located in an unincorporated portion of Sedgwick County, which is characterized by quite a few large tract single-family residential developments scattered throughout land that is primarily used as farmland. The area also includes the approximately 15 lot, Overview Hills Addition (recorded 10-24-2001), which consists of single-family residential lots ranging in size from around 4 acres to 6 acres. The Overview Hills Addition borders the northwest corner of Redmond Estates. The quarter section in which the subject site is located is all zoned SF-20. A mile west, with 135th Street W. acting as a dividing line, the property is all zoned RR Rural Residential (“RR”). The city limits of Wichita is approximately ½ mile east of the subject site and the zoning in that area consists of SF-5 Single-family Residential (“SF-5”), IP Industrial Park (“IP”) and SF-20.

The UZC’s Conditional Use requirements for accessory apartments are as follows:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling.
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood.
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.

- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

CASE HISTORY: The subject site is part of the Redmond Estates single-family residential subdivision, which was recorded with the Register of Deeds on 8-13-2004. Staff has received phone calls of concern about the Conditional Use request. One reason for these calls is to note the existence of a private restrictive covenant that is attached to the subdivision. One of its restrictions states that “No basement, tent, shack, garage, barn or other outbuilding erected on building site covered by these covenants shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.” All property owners are aware of this restriction when property in the subdivision is purchased. A private covenant is a contractual agreement between private individuals and as such is outside the jurisdiction of the MAPC and the BoCC to enforce. Recourse in disputes with those under contract with the private restrictive covenant is with the courts.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-20	Vacant
SOUTH:	SF-20	Residence
EAST:	SF-20	Vacant
WEST:	SF-20	Residence

PUBLIC SERVICES: Sewer service is provided by an on-site septic tank and water service is provided by well. This portion of 119th Street West is a paved section line road and W. 34th Street S. the access road to the development, is paved as well. The 2030 Transportation Map showed 119th Street becoming a paved two lane section line road, which has been completed.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. The Wichita 2030 Urban Growth Area is a category that identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling’s hook-up. An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit. The applicant’s proposal to convert an existing pool house into an accessory apartment is not out of the ordinary in the county or the city, and can be technically accomplished with the proper permits and inspections. The proposed accessory apartment must be smaller than the primary residence. An accessory apartment must remain under single ownership and cannot be subdivided off of the subject site and sold off. The condition of the accessory apartment being on the same water and sewer assures that it will not be subdivided and sold off.

The main issue is this appears to be the first accessory apartment in this subdivision and it appears to be the first in the area. Even though the proposed accessory apartment appears to be the first in the immediate area, the UZC considers it a use that can be considered as Conditional Use in the SF-20 zoning district. Because the typical reason for an accessory apartment is either an aged parent or a member of the family, it is not unusual to have a Conditional Use filed for an accessory apartment where none exist.

Staff usually supports these requests, while noting that there is nothing in the UZC to prevent the accessory apartment from being rented out to someone who is not a member of the family. It needs to be noted that an application for a Conditional Use for a temporary manufactured home in the county (Art.III, Sec.III-D, 3) for people with medical hardships can be made, this type of Conditional Use requires the temporary manufactured home to be removed from the property within 90 days of any change in the circumstances used as a basis for the Conditional Use. The current application is not associated with a medical hardship.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D.6.a of the Unified Zoning Code (UZC) for accessory apartments.
2. The site will be generally developed and maintained as shown on an approved site plan.
3. Prior to occupancy the applicant shall obtain and operate the use in conformance with all applicable permits, including but not limited to building, health, and zoning. The site shall utilize existing driveway approaches.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is part of the Redmond Estates single-family residential subdivision. This subdivision consists of 52 lots approximately 1 (most) to 2 acres in size. The subdivision is a little less than a quarter of the way developed, with houses appearing to have been built between 2004 and 2007, with one house along 119th St. having been built in 1900. The subdivision is located in an unincorporated portion of Sedgwick County, which is characterized by quite a few large tract single-family residential developments breaking up farmland. The area also includes the approximately 15 lot, Overview Hills Addition (recorded 10-24-2001), which consists of single-family residential lots ranging in size from around 4 acres to 6 acres. The Overview Hills Addition borders the northwest corner of Redmond Estates. The quarter section in which the subject site is located is all zoned SF-20. A mile west, with 135th Street W. acting as a dividing line, the property is all zoned RR Rural Residential ("RR"). The city limits of Wichita is approximately ½ mile east of the subject site and the zoning in that area consists of SF-5 Single-family Residential ("SF-5"), IP Industrial Park ("IP") and SF-20.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, which accommodates agricultural uses, low-density single-family residential development and complementary land uses. The site is developed with a single-family residence and an accessory building (pool house), and could continue to be used as currently developed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed accessory apartment will add a second dwelling unit to a one-acre lot that is located in an area where one dwelling unit per acre lot or tract is the norm; however the lots are all of sufficient size to accommodate a second dwelling or accessory building. The existing pool house, which is proposed to be the accessory apartment, is not out of character with other existing structures in the area; however, having a second full-time residence is different from a non-residential accessory structure. The second dwelling unit will add additional traffic and parking.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as Urban Development Mix within the

Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. The policies of the UZC allow one accessory apartment to be associated with a principle dwelling as a Conditional Use if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling's hook-up. An accessory apartment is typically viewed as a compatible use to a single-family residence, as long as there is enough land area and services can be provided for the additional dwelling unit.

5. Impact of the proposed development on community facilities: If developed in compliance with the recommended conditions of approval, existing community facilities are adequate.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

HENTZEN asked if the Commission has heard this case before because he thought he had approved something similar. He asked if the Commission has heard any other cases in the same neighborhood.

SLOCUM said the other case Mr. Hentzen was referring to was in the southeast part of the county.

FOSTER commented that the Commission approved the other case, which also included restrictive covenants.

SHERMAN asked what was the reason for the accessory apartment.

FOSTER said since there was no swimming pool on the property, maybe the terminology "pool house" should be changed. He asked if staff felt there was adequate parking to support two structures.

SLOCUM said yes.

EDWARD CRAWFORD, 12111 W. 34TH ST., SOUTH, APPLICANT said the structure is intended to be used as a pool house in the future. He said for the last 2 ½ years the structure has been used as an accessory apartment for his father-in-law so that they can take care of him. He said he understands the concerns of the neighborhood about changing the zoning and the potential for rental property. He said that is not what they are trying to do and he wants that in the record. He said he understands there was a meeting held Sunday where neighbors were told that if the zoning is changed it will affect their property values. He said he spoke to a few of his neighbors to explain what they were actually doing. He said the reason they are interested in pursuing the accessory apartment is because that is what they have to do to have someone in that structure. He said they would be willing to do this as a temporary assignment as well.

B. JOHNSON asked Mr. Crawford how he was going to deal with the covenants.

CRAWFORD said he would see what happens after this process. He said a lot of the people he has talked to in the neighborhood don't mind what they are doing, it is just a select few of the neighbors who

have a problem with it. He said he would see about changing the covenants. He said they want the conditional use for a family member not for rental property.

B. JOHNSON asked who oversees the covenants.

CRAWFORD said he believed Karl Kraft was part of the commission. He commented that he has a petition which was signed by several people who also signed Mr. Kraft's petition, but he said they agreed with him that this could be done on a temporary basis. He mentioned that Steve Kelly and John Dugan, builders who own a substantial number of lots in the area, had also signed his petition.

DENNIS clarified that this will not be used as a rental property.

CRAWFORD said the accessory apartment allows for use as a rental property, and that is what people are concerned about. He said they want to use this to take care of a family member and mentioned that his father-in-law was in there for two years when he had Parkinson's disease. He said the individual they are working with now is the father of a friend of his.

DENNIS asked the applicant if he would be adverse if the application was approved with the caveat that when it is no longer being used for this person, that it reverts back to the original zoning with no accessory apartment.

CRAWFORD said they have no problem with that.

SHERMAN asked how large the primary residence was.

CRAWFORD said 1,800 square feet on both levels with 4 bedrooms. He said the pool house was 660 square feet and was built with an approved kitchenette and bathroom.

SHERMAN clarified so the primary residence was 3,600 square feet with 4 bedrooms. He asked if the gentleman in the pool house was a relative staying out there for free or was this a business transaction.

CRAWFORD said he was not a relative and he was staying there for free; he was just paying utilities.

SHERMAN clarified that he is paying expenses on property he does not own.

CRAWFORD said yes, if you consider utilities expenses.

FOSTER asked about a temporary allowance for this activity and whether the zoning code allows the Commission to put a certain time period in a condition of the application.

MILLER commented that has been done in the past when the conditional use has been tied to a medical hardship. He said provisions have been withdrawn when the hardship no longer exists or it could be stipulated that it be removed within 90 days, etc. He said that would make null and void the conditional use that allows the structure to be used as an accessory apartment.

MITCHELL clarified then no one could live there after that period, correct.

MILLER said correct.

J. JOHNSON asked what period of time would be considered reasonable.

CRAWFORD said 12 months would be plenty of time.

KARL KRAFT, KRAFT VENTURES commented that he built the majority of the homes in the Redmond Addition. He gave a brief background on development of the area and stated and he and a partner purchased the remainder of the subdivision lots from Don Coleman and Steve Kelly, who no longer own lots in subdivision. He briefly reviewed the original construction of the house in question including the plans, elevations, and drainage plans which the contractor failed to provide and went ahead and put in the foundation anyway. He said when the plans for the foundation were submitted; the structure appeared to be a little low citing the minimum foundation pad requirement. He said when he brought that to the contractor's attention, he was assured that Don Coleman had approved that; however, when he spoke with Don Coleman, Mr. Coleman denied saying anything to the contractor about where the house should sit. He also mentioned standard compliance with the restrictions and covenants on the property including the elevation for drainage on the site provided by Baughman Company, which shows the house sitting on the site wrong. He said the house is 12 inches too low for the ground which was shaved down to get a positive drain for the water away from the property. He said the problem with that was the pool house was at a very low grade level compared to the house and the way the property is designed to drain was in a westerly direction towards a bermed engineered waterway. He said since the top of the berm has been shaved off the water will come across the property exactly where the pool house is located. In addition, he said buildings on two lots to the east will shed approximately 6,000-7,000 square feet of water which will not run in the direction it is supposed to run because the lot has been shaved down. He said this is going to create a water situation at the pool house, which he added was put in "after the fact". He said plans for the pool house were originally denied because there was a closet in the bedroom. He said this subdivision was designed for single-family dwellings and that they could not have another habitable space on the property. He said after a redraw of the plans, permission was eventually given to build a pool house. He referred to pictures of the pool house which showed a furnace system in the bedroom, which is against International Residential Codes because it is a fire hazard. He also mentioned that the Staff Report mentioned a septic tank; however, he said the properties are not designed for septic tanks but are on alternative sewer systems which were sized to the house. He said this system was designed for a 3 bedroom house. He said the system was not designed for nor can it handle more than 3 bedrooms. He mentioned that a local company had been out there recently to pump sludge out of the third tank, which indicates that the system is no longer functioning.

MOTION: To allow applicant two more minutes.

DOWNING moved, **B. JOHNSON** seconded the motion, and it carried (14-0).

He said Mark Brand said the only reason one of these alternative sewer systems malfunctions is due to overuse. He said this system is too small for the area and that they would have to add another 1,000 feet of percolation line, which the property is not big enough to accommodate. He concluded by stating that the covenants, which are registered with Sedgwick County, say no rentals in back yards. He said 17 out of the 18 homeowners in the area have signed protest petitions on the proposal. He said they do not want their property values deteriorated because of rental properties behind homes.

MITCHELL asked if there had been any complaints or action by County Code Enforcement on the drainage and sewer system issues.

KRAFT commented that Glen Wiltse from County Code Enforcement was present to monitor the proper clean out of the third tank and that he was aware of the situation and that the pool house has been used as a habitable space for 2-3 months. He said he believed Mr. Wiltse contacted the Crawford's to inform them that someone living in the pool house was against County Code.

SHERMAN commented that Mr. Crawford indicated that this was going to be a "temporary situation" and asked Mr. Kraft if they would be willing to go along with that. He said he is always concerned when residents don't get along.

KRAFT said they would probably not be willing to go along with a temporary permit. He mentioned drainage and erosion on the property. He said they will contact County Public Works to get the ditch fixed because of the poor drainage of the property.

PAM CRAWFORD, 12111 W. 34TH ST., SOUTH, APPLICANT said Mr. Kraft is wrong when he talks about when the home was initially built. She said the plans for the pool house were designed and submitted to him by the builders (not her husband, which was erroneous information) and neither Mr. Kraft nor his partners returned phone calls. She said the dispute was because they could not get an answer. In addition, she said if the house was built too low, this was the first time they have ever heard anything about it. She said if that is the issue with the drainage, it needs to be addressed. She said she would let her husband address the sludge problem because he spoke with the plumbers who worked on the system and the issue was not because of someone living in the pool house. She concluded by saying that as human beings, she would like to be able to help another individual in this time and economy, she said she would like to see people work together.

MCKAY mentioned a point of order and asked if Pam Crawford's testimony was considered the applicant's rebuttal.

CHAIRMAN VAN FLEET said he would rule that as rebuttal testimony.

EDWARD CRAWFORD commented that the plumber that came out to work on the sewer system said that grease was clogging up the filter to the pump, which allowed everything to back up and overflow. He said they changed the filter and ordered a clean out. He said it was his understanding when the system was built that they have 3,000 feet of line in the drain field and that the system was built to accommodate the extra water usage in the pool house.

HANS ASMUSSEN, 12300 WEST 34TH COURT SOUTH said when he purchased the property in Redmond Estates, it was with the understanding that each property was meant only for a single family dwelling and "non-occupant" outbuildings. He said that was in the covenants presented to them by the developer and it was their expectation that each lot would remain as such. He said allowing a lot in the neighborhood to be granted the conditional use of an outbuilding as an accessory will depress the value of his property and brings into the neighborhood persons who are not "stakeholders. He said it was his expectation that outside market corrections, the value of his property would increase due in part to the current restrictions placed on the lots and houses that are built upon them. He said if one lot is allowed a conditional use for an accessory apartment, then precedence is set in the neighborhood which defeats the planning that went into the development of Redmond Estates.

SHERMAN asked staff if they were aware that there was a business transaction going on at the property, and did it change the recommendation.

SLOCUM said no. He said it was up to the owner's discretion whether they wanted to use the accessory apartment for profit or to help out a family member for a medical hardship for a specific period of time. He said although he did not know that this was a business transaction, it would make no difference in his recommendation.

B. JOHNSON asked if a swimming pool was installed on the property, would that change any of the requirements.

SLOCUM said this was a request for an accessory apartment; someone would be living in there.

B. JOHNSON clarified if there was a pool there, they could have a pool building.

SLOCUM said yes, but no one could live there.

HENTZEN noted that in the past accessory apartments were for family members and that when the need ceased, they were removed. He said it was never intended to be a permanent structure. He said people would pull up a trailer, hook up to the sewer line and a family member could be taken care of. He said that was the background of the use from what he remembers.

MOTION: To deny the request.

MITCHELL moved, **MCKAY** seconded the motion.

SUBSTITUTE MOTION: To approve subject to staff recommendation with a 12-month limit, provided the applicant deals with the covenant restrictions.

B. JOHNSON moved, **FOSTER** seconded the motion, and it carried (8-6).
DENNIS, HENTZEN, MILLER STEVENS, MCKAY, MITCHELL and **DENNIS** – No.

MARNELL commented that it was a difficult case because usually these types of cases are dealing with a medical emergency with a family member. He said this case involves the family member of a friend. He said if the applicant can meet the 4 listed requirements, then he will reluctantly be voting for the substitute motion.

-
6. **Case No.: CON2009-38** - Lena P. Peebler Revocable Trust / City of Wichita Request City Conditional Use to permit major utility (odor control) on property described as;

A tract of land in the Southwest Quarter of the Southwest Quarter of Section 18, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, more particularly described as follows.

Commencing at the Southwest Corner of the Southwest Quarter of Section 18, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence North on an assumed bearing of N0° 57' 57"W along the West line of said Southwest Quarter for 661.66 feet to the Northwest corner of the South Half of the Southwest Quarter of the Southwest Quarter of said Section 18-T28S-R1E, thence N89°00'23"E along the North line of said South Half of the Southwest Quarter of the Southwest Quarter 50.00 feet to a point on the East right-of-way line of Meridian Avenue as granted by the Trustees' Deed filed as DOC.#/FLM-PG: 29047969 in the records of Sedgwick County, Kansas, for the point of beginning, thence N89°00'23"E along the North line of said South Half of the Southwest Quarter of the Southwest Quarter 120.00 feet to a point, thence S0°57'57"E parallel with the West line of said Southwest Quarter of the Southwest Quarter 180.00 feet to a point, thence S89°00'23"W parallel with the North line of said South Half of the Southwest Quarter of the Southwest Quarter 120.00 feet to a point, thence N0°57'57"W parallel with the West line of said Southwest Quarter of the Southwest Quarter 180.00 feet to the point of beginning. Said tract contains 21,600 square feet or 0.496 acres, more or less, generally located north of 47th Street South and east of Meridian.

BACKGROUND: The applicants are seeking Conditional Use approval for a "Utility, Major" designed to inject an odor controlling chemical in the City's waste water pipeline system. The application area is a 0.496 acre unplatted tract located on the east side of south Meridian, 570 feet north of 47th Street South. The undeveloped site is being acquired by the City of Wichita and is a portion of a larger ownership owned by the Peebler Revocable Trust. The City intends to construct an approximately 27 by 25-foot building, excluding shower, hot water heater and chemical fill areas, that will contain equipment designed to store and inject odor control chemicals into the waste water flow. A pipeline will carry the odor control chemical from the building along the east side of south Meridian Avenue right-of-way to a manhole located in the intersection of Meridian and 47th Street South. The Meridian - 47th Street South manhole provides access for the odor control chemicals to the sewer system.

The northern approximately 58 feet of the property are zoned SF-5 Single-family Residential (“SF-5”) while the southern 117 feet of the site are zoned LC Limited Commercial (“LC”). The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines a “Utility, Major” as a “...water and wastewater treatment plants...and similar facilities of agencies that are under public franchise or ownership to provide the general public with...sewage collection or other similar service.” “Utility, Major” uses require Conditional Use approval in all zoning districts when they exceed 150 cubic feet in size.

Surrounding property is zoned a mix of SF-20 Single-family Residential (“SF-20”), SF-5 and LC. These properties are developed with residences, a park or are vacant.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residential; residence
SOUTH:	LC	Limited Commercial; vacant, vacant, residence
EAST:	LC	Limited Commercial / SF-5 Single-family Residential; vacant, park
WEST:	LC	Limited Commercial / SF-20 Single-family Residential; vacant, residence

PUBLIC SERVICES: Public services needed to operate the use are either available or can be extended.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “local commercial.” The “local commercial” designation encompasses commercial, office and personal service uses that do not have a significant regional market draw. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use permits a “Utility, Major” as indicated on the approved site plan.
2. The site shall be developed and operated in conformance with the approved site plan and all applicable local, state and federal regulations.
3. The site shall be platted within one year of final approval of this Conditional Use.
4. In addition to other applicable enforcement remedies, if the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is zoned SF-5, LC or SF-20 and is developed with residences, a park or vacant.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned SF-5 and LC and could be developed as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed conditions of approval should minimize any anticipated impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The facility is aimed at reducing or eliminating odor generated by the city’s waste water treatment plant, which should be viewed as a gain for the public’s health, safety and welfare.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “local commercial.” The “local commercial” designation encompasses commercial, office and personal service uses that do not have a significant regional market draw. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.
6. Impact of the proposed development on community facilities: Should improve upon a side effect of providing a community facility - waste water treatment.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (14-0).

-
7. Case No.: CON2009-39 - Brian Murdock (owner/applicant), Professional Engineering Consultants c/o Rob Hartman (agent) Request County Conditional Use for a Major Utility (an ASR well) in RR Rural Residential zoning on property described as;

The West 466.7 feet of the North 466.7 feet of the Northwest Quarter of Section 5, Township 25 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, generally located southeast of 199th Street West and 125th Street North.

BACKGROUND: The application area has an existing well house for the City of Wichita Water Utility. The well house was built prior to zoning or Conditional Use requirements in the County. The City of Wichita Water Utility now wishes to replace the existing well house with a new, one story well house; see the attached site plan provided by the applicant. The new well house will be slightly larger, the old well house will be removed, the site will be fenced with an 8-foot chain link fence, it could have lighting that would be directed into the site and away from surrounding properties, and it could have up to a 32 square-foot sign. The requested facilities are associated with the City of Wichita’s Aquifer Storage and Recovery (ASR) project. The applicant is concurrently platting the property.

Property north of the site is in Harvey County and is primarily used for agriculture. Residential uses exist approximately 1,000 feet northwest and northeast of the site. Land south and east of the site is zoned RR, used for agriculture, and is under the same ownership as the application area. Property west of the site is zoned RR and is used for agriculture and a manufactured home.

CASE HISTORY: The property was zoned RR in 1985 when the county adopted county-wide zoning.

ADJACENT ZONING AND LAND USE:

NORTH:	Harvey County	Agriculture, single-family residential
SOUTH:	RR	Agriculture
EAST:	RR	Agriculture
WEST:	RR	Agriculture, manufactured home

PUBLIC SERVICES: 125th Street North and 199th Street West are unpaved section line roads with a 30-foot half width right-of-way (ROW) at the site. The proposed plat of the site will bring the ROW half width at the site up to county standards.

CONFORMANCE TO PLANS/POLICIES: The County’s 2030 functional land use guide designates

this site as “Rural” and not within any small city’s 2030 Urban Growth Area. The Rural category encompasses land outside the 2030 urban growth areas for Wichita and small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in the County, and predominantly larger lot residential uses. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year, and the following conditions:

- A. The Conditional Use for a Utility, Major permits a one-story well control house, piping, parking, fencing, and underground waterlines.
- B. The site shall be developed and maintained in substantial conformance with the approved site plan, and in compliance with all applicable local, state and federal regulations and codes.
- C. Lighting on the site shall not exceed 15 feet in height, and shall be directed away from surrounding properties.
- D. Signage is limited to a maximum of 32 square feet and 10 feet in height. If the sign is lighted, lighting shall be designed to minimize light pollution and night time glare.
- E. If the Zoning Administrator finds there is a violation of any of the conditions of approval, the Zoning Administrator, in addition to enforcing other remedies set forth in Article VIII of the Unified Zoning Code may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north of the site is in Harvey County and is primarily used for agriculture. Residential uses exist approximately 1,000 feet northwest and northeast of the site. Land south and east of the site is zoned RR, used for agriculture, and is under the same ownership as the application area. Property west of the site is zoned RR and is used for agriculture and a manufactured home.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential, which allows agriculture and residences with a minimum lot size of between two and four and one-half acres, depending upon the on-site sewer solution. The site was developed with a utility before zoning existed in the County. The site has legal non-conforming use rights for a utility, but cannot be significantly improved without the requested Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: A well house has existed on the site for over 24 years without any apparent negative effect on surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The County’s 2030 functional land use guide designates this site as “Rural” and not within any small city’s 2030 Urban Growth Area. The Rural category encompasses land outside the 2030 urban growth areas for Wichita and small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in the County, and predominantly larger lot residential uses. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.
5. Impact of the proposed development on community facilities: Approval will provide the means to increase stored water volume and quality that can be made available for beneficial use.

Projects of this type enhance the quality and quantity of beneficial yield of the aquifer, creating a more sustainable water supply.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (14-0).

-
8. **Case No.: DER2009-04** - Request Proposed amendment to the Wichita-Sedgwick County Unified Zoning Code dealing with the creation of a new use type, “motor vehicle impound lot” and allowing said use to be allowed as a Conditional Use in the LI Limited Industrial and GI General Industrial districts, subject to specified supplementary use regulations.
General Location: City-wide

BACKGROUND: In June 2009, the Metropolitan Area Planning Commission (MAPC) asked planning staff to review our current regulations regarding the storage of motor vehicles. The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines the following terms:

Vehicle Storage Yard: the keeping outside of an enclosed Building for more than 72 consecutive hours of one or more Motor Vehicles (except Inoperable Vehicles), boats, trailers, or unoccupied recreational vehicles. The term vehicle storage yard does not include “wrecking/salvage yard.”

Vehicle, Inoperable: any vehicle that is unable to operate or move under its own power. It shall also mean any Motor Vehicle that is in an abandoned, wrecked, dismantled, scrapped, junked or partially dismantled condition that includes having no wheels, or lacking other parts necessary for the normal operation of the vehicle. It shall also mean any vehicle that because of mechanical defects, a wrecked or partially wrecked frame or body or dismantled parts, cannot be operated in a normal and safe manner. An Inoperable Vehicle shall not include vehicles needing only the inflation of tires, the installation of a battery or the addition of fuel to operate. In the City, an Inoperable Vehicle shall also include any Vehicle with uninflated tires or otherwise meeting the definition of Inoperable Vehicle in Title 8 of the Code of the City of Wichita.

Wrecking/Salvage Yard: a Lot, land or Structure, or any part thereof, used for the collecting, dismantling, storing and / or salvaging of machinery, equipment, appliances, Inoperable Vehicles, vehicle parts, bulky waste, salvage material, junk, or discarded materials; and / or for the sale of parts thereof. Typical uses include Motor Vehicle Salvage Yards and junkyards. In the unincorporated area of the county only, the term Wrecking / Salvage yard” shall not include the storage of salvage materials as permitted in Section 19-22(c) of the Sedgwick County Code.

The circumstance that triggered the Planning Commission’s request to review this issue was the filing of three applications for “wrecking and salvage” by individuals who provide vehicle towing and impound services and/or conduct auto insurance pool auctions. Some vehicles taken to these businesses are inoperable, and may be stored up to three or four months, without any intention of repairing the vehicle, before they are removed from the site. The vehicles are not dismantled or parted out, only stored, but because the business stores inoperable vehicles for longer than 72 hours, by UZC definition, the activity is categorized as “wrecking and salvage.” Wrecking and salvage uses are only permitted with “Conditional Use” approval in the LI Limited Industrial (“LI”) and GI General Industrial (“GI”) districts, but are permitted “by right” in the AFB district.

The first requests were CON2008-53 and ZON2008-55, which were Sedgwick County applications for LI zoning and a Conditional Use for “wrecking and salvage” on property located on the west side of Rock Road at 43rd Street South. The applicant runs an auto insurance pool auction business that requires the storage of inoperable vehicles until they are sold. Planning Staff recommended denial of the request and the MAPC also recommended denial by a 6 to 5 vote. The applicant then withdrew his application.

The second application, CON2009-00005, was for a Conditional Use for “wrecking and salvage” on property zoned LI, and located in the City of Wichita on the west side of Mosley Avenue, south of Bayley Street. The applicant runs a towing service and they also store impounded vehicles for local law enforcement. Some of the towed or impounded vehicles are inoperable. Some of these inoperable vehicles become the property of the tow service operator, who ultimately sells the vehicles. The storage of the inoperable vehicles triggers the need for a “wrecking and salvage” conditional use permit. Staff recommended denial of this particular request, the MAPC recommended approval (7-5-1) and the City Council denied (7-0) the request.

The third requests, CON2009-14 and ZON2009-13, were Sedgwick County applications for LI zoning and a Conditional Use for “wrecking and salvage” on property located east of West Street and north of MacArthur Road. The applicant for these two cases was the same as the first application discussed above. Staff recommended approval, and MAPC recommended approval (10-2). The Board of County Commissioners approved this application.

With the denial of the first two cases, some Planning Commissioners voiced the opinion that the current zoning code was too restrictive for this type of activity; that the code should make a distinction between a true wrecking and salvage operation and a use that just stores inoperable vehicles and does not actively part out or dismantle vehicles. Based on that discussion, the Planning Commission asked staff to draft a text amendment that resolves those concerns.

The proposed solution was to create a new use type, “Motor vehicle impound lot.” A “Motor vehicle impound lot” is a lot, land or structure, or any part thereof, used for the storing of operable or inoperable “vehicles, motor,” that are held on the property for the purpose of impound and/or routine and periodic sales occurring at least three times a year. Materials not meeting the definition of “vehicle, motor,” such as appliances, bulky waste, junk, or other kinds of machinery or equipment not defined as “vehicle, motor” are prohibited from being parked, stored or placed on property approved for use as an “impound lot.”

The original proposal was to allow “Motor vehicle impound lot” as a permitted use by right in the LI and GI districts, subject to supplementary use regulations: 1) only a towing company, auto insurance pool operator or similar business properly licensed under applicable law may operate a motor vehicle impound lot; 2) motor vehicles stored on a “Motor vehicle impound lot” shall not be dismantled, parted out or salvaged; 3) the site must be enclosed by a fence or wall not less than eight feet in height and having cracks or openings not in excess of five percent of the area of the fence; 4) vehicles stored, parked or placed on the site shall not be visible at ground level from adjoining property; 5) the storage of any parts of vehicles is prohibited 6) vehicles shall be stored on an all weather surface and 7) the site is not contiguous to an arterial street, expressway or freeway.

The Advance Plans Committee of the MAPC met twice to review the original proposed amendment, and, on May 21, 2009, approved the wording described in the two previous paragraphs. Another subcommittee of the MAPC that was established to review zoning code amendments also reviewed this item on June 4, 2009, and approved forwarding it to the full MAPC for consideration.

In July all of the District Advisory Boards (“DAB”) reviewed the original proposal and recommended denial.

After the July DAB meetings, the MAPC reviewed the original proposal on July 23, 2009, and voted to amend the proposal to require Conditional Use approval (instead of as a use by right), and also directed

staff to take the revised proposal back to the DABs for consideration. All other provision of the original amendment remained – the definition, the districts in which the use is allowed and the supplementary use regulations – the same as the original. Upon consideration of the revised proposal, DABs II, IV and VI recommended approval; DABs I and V recommended denial and DAB III declined to hear the revised proposal.

CASE HISTORY: The storage of inoperable vehicles has required “special permit” (in the pre-1996 zoning code) or “conditional use” approval (since 1996) in the E and F districts (pre-1996 code; today’s LI and GI districts) and the LI and GI districts (since 1996), since at least 1954.

CONFORMANCE TO PLANS/POLICIES: *The Wichita-Sedgwick County Comprehensive Plan’s* Industrial land use Goal IV states the community should promote the expansion of the industrial base through the expansion of suitable industrial sites and, Objective IV.A states that industrial activities and development should be promoted in a manner that is compatible with the built and natural environment. Residential land use Objective II. B. states that we should minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments. Some of the neighborhood plans have more detailed policy positions dealing with auto oriented uses. Staff incorporates those policies into their analysis of individual applications where applicable.

RECOMMENDATION: Adoption of the proposed amendment would provide an additional auto-related use type. From a zoning administration standpoint, the proposed amendment distinctly separates the storage of inoperable vehicles from wrecking and salvage operations. The proposed amendment includes development standards designed to mitigate foreseeable impacts by requiring screening from ground view and the use of all-weather surfaces where vehicles are stored. Staff recommends approval of the proposed amendment.

This recommendation is based upon the following findings:

1. **The zoning, uses and character of the neighborhood:** While the proposed amendment separates the storage of inoperable vehicles from wrecking and salvage operations, the zoning districts and the requirement for a Conditional Use remains the same for both uses. Also, the recommended supplemental use regulations: limiting those who can apply for such zoning, requiring screening from ground view, prohibition against parting of stored vehicles and requiring an all weather surface in the area where vehicles are stored should address most compatibility with surrounding use questions.
2. **The suitability of the subject property for the uses to which it has been restricted:** Most properties already zoned LI and GI have been so zoned for decades, and are located in older areas of the city near key railroad or arterial or highway routes.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The current code lumps the long term storage of inoperable vehicles in with wrecking and salvage. The proposed amendment will separate the two uses but maintain the same zoning district requirements – only allowed in LI and GI districts with conditional use approval. Conditional use approval allows for the addition of reasonable site-by-site development standards that should further minimize any detrimental impacts the use might have on surrounding properties.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** Currently *The Wichita-Sedgwick County Comprehensive Plan* Commercial Location Guideline 6 states that commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as: the CBD fringe; segments of Kellogg; established areas of similar development; and , areas where traffic patterns, surrounding land uses and utilities can support such development. Industrial land use Goal IV states the community should promote the expansion of the industrial base through the expansion of suitable industrial sites and, Objective

IV.A states that industrial activities and development should be promoted in a manner that is compatible with the built and natural environment. Residential land use Objective II. B. states that we should minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments. Some of the neighborhood plans have more detailed policy positions dealing with auto oriented uses. Staff incorporates those policies into their analysis of individual applications where applicable.

5. Impact of the proposed development on community facilities: Public facilities should not be impacted by the proposed change.
6. Opposition or support of neighborhood residents: There has been documented public opposition to individual applications that required conditional use approval under the current code.

DALE MILLER, Planning Staff presented the Staff Report.

MITCHELL commented that it would appear that adding the requirement for a Conditional Use permit to the first recommendation didn't sway the DAB's who apparently don't think they have enough voice in the process yet.

MILLER commented that 3 of the DABs recommended approval of the revised proposal; 2 DAB's recommended denial; and 1 DAB opted not to rehear the proposal.

HILLMAN said he recalled that District III opted not to rehear the item.

MILLER said he can't explain why the DAB voted the way it did. He said the only information he has is the vote and the information that is included in the DAB Memorandums.

MILLER STEVENS clarified that staff wanted to see if the Commission wanted to proceed to recommend this as an ordinance change.

MILLER said correct; the action being decided today was whether the Commission wanted to recommend this ordinance change on to the governing bodies as an amendment to the Unified Zoning Code or leave the ordinance the way it is with motor vehicle impound lot uses the same as wrecking and salvage yards.

FOSTER commented that after all staff has gone through with the definition, this is going to make the process much easier. He added that he did not understand the denial of the DAB boards and thought perhaps that was a misunderstanding on their part.

MILLER said he didn't know if there was a misunderstanding, but he thinks what they are saying is all you have done is basically take the wrecking and salvage title and changed it to something else, but the same activity is still going on, in their minds. He said it will still require a Conditional Use, it will still require a public hearing and it will still require an application but if the Code is amended, it will be called something different other than wrecking and salvage.

FOSTER said they learned from the industry that a different definition was needed.

MILLER responded but to DAB members from the street looking in, they can't tell any difference between wrecking and salvage and impound lot; at least that would be his guess.

HENTZEN clarified that this was a public hearing and that it had been advertised as such.

MILLER said yes.

HILLMAN asked if a hard surface was required.

MILLER said no, and referred to item number 6, which states in part "...vehicles will be stored on all weather surface which includes rock ½ inch in size or larger...." He said the UZC definition of "all weather surface" also includes concrete and asphalt and other impervious materials.

VICKI CHURCHMAN commented as a member of DAB I, she said DAB I voted unanimously against this change in definition because they felt very strongly that a definition is not necessary because impound lots for all practical purposes conduct the same kinds of activities and have the same appearance, pollution and rodents as a salvage yard. In addition, she said by State Law, in order to operate an impound lot you have to be a licensed salvage facility. She said the DAB Boards made it clear they were opposed. She said the City Council voted against the application on Meade. She said the DAB's felt that coming up with a definition for an impound lot was an end run around what the DAB's had voted against in the first place. She said there was no need for another definition, it was a Conditional Use any way and they felt the purpose of separating the verbiage was to be misleading. She said to say "this is not a salvage lot, this is simply an impound lot" then maybe people may be misled into thinking that what they are going to end up getting is going to look different than a salvage lot. She concluded that there was no need for a separate definition.

HILLMAN asked Mrs. Churchman for her opinion that based on the 7-0 vote to deny the Meade application by the City Council, does she think setting up an amendment to the UZC in this manner would change their vote.

CHURCHMAN said she can't speak for the City Council but added that 3 Council members have said they will not vote for the proposed amendment.

B. JOHNSON asked Ms. Churchman if she has been to any of the impound lots or salvage areas.

CHURCHMAN responded yes, including one on south Meridian and several along 21st Street.

B. JOHNSON asked if she has been to the new one on south West Street by MacArthur Road.

CHURCHMAN commented that she has heard that the business owners near there are upset because of all the traffic.

B. JOHNSON said he goes by that location 4-5 times a day and he doesn't ever see any traffic and that it appears to be a very neat operation. He said it looks a lot better than the empty trailer across the road from it. In addition, he said there is a drastic difference between that location and the salvage operation down the road.

CHURCHMAN said most of the new salvage yards will be better because of things that have happened and guidance that has come down in recent months and years. She said she is not opposed to those, that places have a right to have those. She said they felt the definition is not necessary and that this is easily covered by the original ordinance.

JIM RUANE, 7729 KILLARNEY COURT, ATTORNEY FOR AUTO INN one of the applicants mentioned in the history of this request and one that the Commission has considered an application from that he feels has bearing on these questions. He said he applauded the Board's efforts and said he thinks the Board has learned a lot wrestling with these cases to recognize that there is a difference between a vehicle storage yard and a wrecking and salvage operation. He said the processing of vehicles and the operation of a wrecking and salvage yard is fundamentally different from the vehicle impound and storage lots that he represents and hopes to bring their perspective to the Commission. He said Mrs. Churchman is right that if this is amended, it will be a distinction that is drawn, but one without a difference. He said the proposal is that there would be a different category for a vehicle storage yard,

separate and apart from a wrecking/salvage yard but both of the uses will require a Conditional Use permit even if it is in General Industrial (GI) and Limited Industrial (LI) zoning. He said his request to the Commission was that there is an amendment that vehicle storage yards only are allowed in LI and GI “by right.”

MITCHELL clarified so Mr. Ruane would like to eliminate the need for a Conditional Use and public hearing on those cases.

RUANE said yes, he believes that was the original intention.

HILLMAN commented so Mr. Ruane sees no reason why the public would be interested or concerned when a set up like an impound lot goes into place and they would have no opinion on the subject.

RUANE said he doesn’t agree. He said even the DAB results suggest that people don’t really care about the facts. He said in the instance of the distinction that the Commission draws, there is a “Not In My Back Yard” reaction whether it’s a vehicle impound, storage lot, or wrecking and salvage yard because they are all painted with the same brush. He said to allow it as a use “by right” would eliminate the public hearing and allow these consistent uses to be in areas that are already zoned for uses that are far more dense and industrial than this.

HENTZEN commented with the number of municipalities, cities and counties he can’t believe that someone hasn’t addressed this issue. He asked staff if they have we checked with any other entities.

MILLER responded that staff conducted an Internet search on Omaha, NE; Tulsa and Oklahoma, OK and Kansas City, KS and that those cities don’t make a distinction between impound lot and wrecking/salvage yard. He said they handle the issue similarly to Wichita.

MITCHELL asked if a public hearing was required.

MILLER said he didn’t research how applications were processed, he just looked at definitions to see if an impound lot was a separate use from wrecking/salvage.

MITCHELL asked about removing the conditional use requirement.

MILLER said that would bring the discussion back to the original motion which was to allow the proposed use “by right” in Limited Industrial (LI) and General Industrial (GI) zoning.

MITCHELL said the revised proposal doesn’t seem to have made any difference with the DAB’s.

MILLER reiterated the DAB action and commented that he thought the last vote was a considerably different reaction from the proposed “use by right” which was six disapprovals.

HILLMAN commented so basically the DAB vote was 3 to 3.

BILL PRATHER, 1528 S. EMPORIA said he had dual duty as part of the Implementation Commission for the South Central Neighborhood and as a member of Wichita Independent Neighborhoods (WIN). He said he was in favor of denying the request for an impound lot in his neighborhood. He said WIN has not taken any action on the present proposal, but he said be sure that if this goes forward to the City and County governing bodies, WIN will alert all neighborhoods in Wichita and Sedgwick County. He said one of the differences is that salvage yards operate twenty-four hours a day and are not restricted to receiving vehicles under law enforcement control due to drugs busts and other issues. He said he didn’t see any purpose in going through this exercise because the current zoning code is adequate; the issue is well defined in the neighborhood plan and he doesn’t understand why this amendment would even be considered.

MOTION: To deny staff recommendation for motor vehicle impound lots as a separate category.

HILLMAN moved, **MILLER STEVENS** seconded the motion.

DOWNING asked staff, based on their experience, with separate impound lots and wrecking/ salvage yards both requiring conditional use approval, will the Commission see any reduction in requests for those uses by applicants.

MILLER said he didn't know if the extra category will make any difference. He said it depends if the activity will take place on a lot that is not properly zoned, the Commission will still get whatever applications it takes to make the industry work.

DOWNING commented so this is not going to reduce the number of applications or requests or discussions that occur when these applications come in.

MILLER said since staff doesn't generate the request; they do not control the number of applications. He said if the question is--is there a potential for there to be a different perception based on whether the operation is called a wrecking and salvage yard or motor vehicle impound lot. He commented that the Commission has heard the discussion and that they will have to form their own individual opinions on whether that makes a difference on how these activities are viewed.

SUBSTITUTE MOTION: To approve subject to staff recommendation to amend the Unified Zoning Code to establish motor vehicle impound lots as a separate category and forward the recommendation to the appropriate governing bodies.

MARNELL moved, **MCKAY** seconded the motion, and it carried (12-2).
MILLER STEVENS and **HILLMAN** – No.

FOSTER commented that he recalled when this discussion originated staff had problems “shoe horning” this use into some sort of category. He said he appreciates getting a definition because it assists the Commission to see what they are looking at. He said environmental concerns as well as other areas need to be evaluated. He said another thing to keep in mind is the Commission will still hear these requests as Conditional Use permits and that there still will be a public hearing, so he is going to support the substitute motion.

MITCHELL said he was in a rather unusual position because he voted against the action to include the conditional use hearing; however, he said he felt this was a lot closer to satisfying the need for the Commission and the public to have a definition, so he said he would support the substitute motion.

J. JOHNSON asked which DAB's supported the staff recommendation.

MILLER said DAB's 2, 4, and 6 voted to approve the proposed amendment.

VAN FLEET said he was going to support the substitute motion. He said as he recalled the cases that came before the Commission, such as the case on K-15, he said it was denied not because of a misunderstanding of the nature of the business, but because of the traffic it would generate and the location. He said that applicant has found another location in the southwest part of the City that he is quite happy with. He said painting this activity as a junk yard just casts it in the wrong light because it is big business, conducted electronically and intertwined nationally so bidders may be from California or Maine. He said the inventory just happens to be located in certain areas of the City. He said it is a legitimate business that is a by-product of our civilization.

MILLER STEVENS said she is in opposition to the substitute motion because she feels this is just “splitting hairs” and creating more demand and monitoring for inspection staff. She said she sees no need to add more intensity to a situation when there is already something on the books that takes care of the issue.

The Metropolitan Area Planning Department informally adjourned at 3:23 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2009.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)